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AMENDED IN ASSEMBLY APRIL 3, 2000

AMENDED IN ASSEMBLY MARCH 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 2234**

**Introduced by Assembly Member Wiggins**

February 24, 2000

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An act to amend Sections 10167, 10167.2, 10167.3, 10167.7, 10167.9, 10167.10, 10167.11, and 10167.12 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 2234, as amended, Wiggins. Prepaid rental listing services.

The Real Estate Law provides for the regulation and licensing of prepaid rental listing services by the Real Estate Commissioner. A willful violation of these provisions is a crime.

Existing law imposes various requirements on prepaid rental listing services, and among other things requires a contract for prepaid rental listing services to contain various provisions, including a requirement for the service to refund a prospective tenant's fee under certain circumstances, and

provides a remedy in small claims court if the fee is not refunded when required.

This bill would modify the definition of “prepaid rental listing service” and provide that a contract for those services may be provided by the licensee to the prospective tenant and signed in electronic form, as specified. ~~This bill would require the commissioner to establish an administrative claims procedure as an informal alternative to the court procedure.~~ *This bill would increase the amount of the bond required to be provided by a licensee to the department from \$2,500 to \$10,000.* This bill would require that the amount of the ~~service charge fee charged~~ *service charge* to a prospective tenant that a licensee may retain ~~as a service charge~~ be increased initially from \$25 to \$50 and thereafter adjusted intermittently, as specified, by the Department of Real Estate. This bill would require that a licensee, within 10 days of receiving specified documentation, including a written statement signed by the prospective tenant under penalty of perjury and indicating that the prospective tenant did not obtain a rental through the services of the licensee, refund to a prospective tenant any ~~amount fee~~ paid over the permitted service charge for specified services. This bill would make other related changes to these regulatory provisions.

Because a violation of the bill’s requirements would be a crime, this bill would impose a state-mandated local program by expanding the definition of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 10167 of the Business and  
2 Professions Code is amended to read:

1 10167. The definitions used in this section shall govern  
2 the construction and terms as used in this article:

3 (a) “Prepaid rental listing service” means the business  
4 of supplying prospective tenants with listings of  
5 residential real properties for tenancy, by publication or  
6 otherwise, pursuant to an arrangement under which the  
7 prospective tenants are required to—~~(1)~~ pay an advance  
8 or contemporaneous fee *(1)* specifically to obtain listings  
9 or *(2)* to purchase any other product or service in order  
10 to obtain listings, but which does not otherwise involve  
11 the negotiation of rentals by the person conducting the  
12 service. “Prepaid rental listing service” does not include  
13 the business of providing roommate referral information  
14 designed to assist persons in locating a roommate who  
15 meets various selection criteria related to the prospective  
16 roommate’s personal traits, characteristics, habits or  
17 preferences, and selection criteria related to the  
18 residential real property occupied by the prospective  
19 roommate.

20 (b) “Licensee” means a person licensed to conduct a  
21 prepaid rental listing service or a person engaged in the  
22 business of a prepaid rental listing service under a real  
23 estate broker license.

24 (c) “Location” means the place, other than the main  
25 or branch office of a real estate broker, where a prepaid  
26 rental listing service business is conducted.

27 (d) “Designated agent” means the person who is in  
28 charge of the business of a prepaid rental listing service  
29 at a given location.

30 (e) “Fee” means the charge required by a licensee ~~for~~  
31 *(1) to obtain listings of—currently—available* residential real  
32 properties for tenancy *or (2) to purchase any other*  
33 *product or service in order to obtain listings.*

34 (f) “Service charge” means the amount of the fee that  
35 a licensee may retain if a prospective tenant finds housing  
36 through a source other than the listings supplied by the  
37 licensee.

38 SEC. 2. Section 10167.2 of the Business and  
39 Professions Code is amended to read:

1 10167.2. (a) It is unlawful for any person to engage in  
2 the business of a prepaid rental listing service unless  
3 licensed in that capacity or unless licensed as a real estate  
4 broker.

5 (b) The requirements of this article apply only to the  
6 provision of listings of residential real properties for  
7 tenancy by prepaid rental listing services. Except if  
8 expressly provided otherwise in this article, the  
9 requirements of this article do not apply to any other  
10 goods or services sold by a prepaid rental listing service  
11 as long as purchase of those goods or services is not  
12 required to obtain those listings and as long as the  
13 purchase of those goods or services is not included in the  
14 same contract as the contract to provide those listings,  
15 and as long as the contract to provide those listings clearly  
16 specifies that the purchase of any other goods and services  
17 is optional.

18 SEC. 3. Section 10167.3 of the Business and  
19 Professions Code is amended to read:

20 10167.3. (a) A separate application for a license as a  
21 prepaid rental listing service shall be made in writing for  
22 each location to be operated by a licensee other than a  
23 real estate broker. Each application shall be on forms  
24 provided by the department, shall be signed by the  
25 applicant, and shall be accompanied by a one hundred  
26 dollar (\$100) application fee for the first location, and a  
27 twenty-five dollar (\$25) application fee for each  
28 additional location of the applicant.

29 Applications to add or eliminate locations during the  
30 term of a license shall be on forms prescribed by the  
31 department. A twenty-five dollar (\$25) application fee  
32 for the remainder of a license term for each location to be  
33 added shall accompany the application.

34 (b) A real estate broker may provide a prepaid rental  
35 listing service at a licensed office for the conduct of his or  
36 her real estate brokerage business if the business at the  
37 office is conducted under the immediate supervision of  
38 the broker or of a real estate salesperson licensed to, and  
39 acting on behalf of, the broker.

SEC. 4. Section 10167.7 of the Business and Professions Code is amended to read:

10167.7. Except as provided in Section 10167.8, each licensee shall provide to the department, and at all times maintain in force, a bond in the amount of ~~two ten thousand five hundred dollars (\$2,500)~~ *(\$10,000)* for each location. The bond may be in the form of a corporate surety bond, or a cash deposit. A cash deposit may be deposited by the licensee in an interest-bearing account assigned to the commissioner, with interest earned thereon payable to the licensee. The bond or cash deposit may be utilized by the commissioner for the benefit of any unsatisfied judgment creditor in an action pursuant to subdivision (e) of Section 10167.10, ~~or for the benefit of any successful claimant in a claim brought pursuant to subdivision (f) of Section 10167.10.~~

SEC. 5. Section 10167.9 of the Business and Professions Code is amended to read:

10167.9. (a) Prior to the acceptance of a fee ~~for listings, or for purchase of goods or services required to obtain listings,~~ a licensee shall offer the prospective tenant a written contract, either on paper or in electronic form, which shall include at least the following:

(1) The name of the licensee and the addresses and telephone numbers of the principal office or location of the licensee and of the location, or branch office of a real estate broker, providing the listing to the prospective tenant.

(2) Acknowledgment of receipt of the fee, including the amount.

(3) A description of the service to be performed by the licensee, including significant conditions, restrictions, and limitations where applicable.

(4) The prospective tenant's specifications for the rental property, including, but not limited to:

(A) Type of structure, including, but not limited to, detached single-family home, apartment, or duplex.

(B) Location by commonly accepted residential area name, by designation of boundary streets, or by any other

1 manner affording a reasonable means of identifying  
2 locations acceptable to the prospective tenant.

3 (C) Furnished or unfurnished.

4 (D) Number of bedrooms required.

5 (E) Maximum acceptable monthly rental.

6 (5) The contract expiration date, which shall not be  
7 later than 90 days from the date of execution of the  
8 contract.

9 (6) A clause setting forth the right to a full or partial  
10 refund of the fee paid ~~in advance~~ as provided in Section  
11 10167.10.

12 (7) The signature and printed full name of the licensee  
13 or of the designated agent, real estate salesperson, or  
14 employee acting on behalf of the licensee. The signature  
15 of any person, including any signature required by the  
16 terms of the contract to be provided by the prospective  
17 tenant, may be provided in any electronic form that  
18 provides a reasonable method of indicating that the  
19 individual whose signature is required authorized the  
20 contract to be signed in that electronic form.

21 (8) A clause in bold type letters outlining the small  
22 claims court remedy available to the prospective tenant.

23 (9) A clause in boldface type letters clearly stating that  
24 the purchase of any goods and services other than the  
25 provision of listings of residential real properties for  
26 tenancy is optional.

27 (b) (1) The original of each contract, any separate  
28 contracts for required goods or services, refund claims,  
29 receipts and any other relevant documents shall be  
30 retained by the licensee for a period of not less than three  
31 years from the date of termination of the contract during  
32 which time the contract shall be subject to examination  
33 by a duly authorized representative of the commissioner.  
34 Any records retained pursuant to this subdivision that are  
35 stored in the ordinary course of business in digital media  
36 shall, upon request of a duly authorized representative of  
37 the commissioner, be provided on diskette, CD-ROM or  
38 similar portable digital storage medium. For purposes of  
39 this subdivision, the "original" of a contract executed in  
40 electronic form shall be either the copy of the contract

1 stored in digital media or a paper printout of that  
2 contract.

3 (2) *Any licensee, or employee thereof, shall dispose of*  
4 *the documents required to be kept pursuant to paragraph*  
5 *(1) by shredding or other appropriate means so that the*  
6 *identity of the prospective tenant may not be determined*  
7 *from the disposed information alone or in combination*  
8 *with other publicly available information.*

9 (c) The form of contract proposed to be used by a  
10 licensee to effect compliance with this section shall be  
11 filed with the department prior to use. Any modification  
12 of a form previously filed with the department, including  
13 a change in the name or business address of the licensee,  
14 shall also be filed prior to use. The department shall  
15 withhold the issuance or renewal of a license until the  
16 department has approved the contract. If a proposed  
17 modification to a contract has not been approved or  
18 disapproved within 15 working days of being filed with  
19 the department, the proposed modification shall be  
20 deemed approved. If a proposed modification or contract  
21 provision is disapproved, the department shall  
22 communicate that disapproval in writing to the licensee  
23 within 15 working days of being filed with the  
24 department, accompanied by a written justification of  
25 why the modification or contract provision is contrary to  
26 the requirements of this article.

27 (d) Notwithstanding any other provision of law, a  
28 contract for prepaid rental listing services executed in  
29 electronic form, and signed in any electronic form that  
30 provides a reasonable method of indicating that the  
31 individual whose signature is required authorized the  
32 contract to be signed in electronic form, shall be valid to  
33 the same extent as an executed written contract. Upon  
34 request by the customer, the licensee shall deliver an  
35 executed paper copy to the customer within five working  
36 days of receiving the request.

37 SEC. 6. Section 10167.10 of the Business and  
38 Professions Code is amended to read:

39 10167.10. (a) (1) A licensee shall refund in full the  
40 ~~advance fee paid by a prospective tenant for the provision~~

1 ~~of listings of residential real properties for tenancy or for~~  
2 ~~goods or services required to obtain those listings~~ if the  
3 licensee does not, within five days after execution of the  
4 contract, supply at least three rental properties then  
5 available to the prospective tenant and meeting the  
6 specifications of the contract, unless the prospective  
7 tenant obtains a rental through the services of the  
8 licensee.

9 (2) A licensee will be deemed to have supplied  
10 information meeting the specifications of the prospective  
11 tenant if the information supplied meets the contract  
12 specifications with reference to: (i) type of structure; (ii)  
13 designated area; (iii) furnished or unfurnished; (iv)  
14 number of bedrooms; (v) maximum rental; and (vi) any  
15 other specification expressly set forth in the contract. A  
16 demand for the return of the fee shall be made by or on  
17 behalf of the prospective tenant within 10 days following  
18 the expiration of the five-day period referred to above by  
19 delivery or by mailing by registered or certified mail to  
20 the address of a location, or branch office of a real estate  
21 broker, set forth in the contract.

22 (b) (1) Except as provided in paragraph (3), a  
23 licensee shall refund any ~~amount paid for the provision of~~  
24 ~~listings of residential real properties for tenancy or for~~  
25 ~~goods or services required to obtain those listings over fee~~  
26 ~~paid over~~ *fee paid over* and above the sum of a fifty dollar  
27 (\$50) service charge to the prospective tenant if the  
28 prospective tenant obtains a rental other than through  
29 the services of the licensee during the term of the  
30 contract or does not obtain a rental, provided that the  
31 prospective tenant demands a return of that part of the  
32 fee within 10 days after the expiration of the contract.

33 (2) The licensee shall refund any ~~amount paid for the~~  
34 ~~provision of listings of residential real properties for~~  
35 ~~tenancy or for goods or services required to obtain those~~  
36 ~~listings~~ *fee paid* over and above the sum of a fifty dollar  
37 (\$50) service charge to the prospective tenant within 10  
38 days of receipt from the prospective tenant of either the  
39 documentation specified in subparagraph (A) or the



1 written statement specified in subparagraph (B), as  
2 applicable:

3 (A) Except as specified in subparagraph (B), a  
4 prospective tenant demanding a refund shall provide to  
5 the licensee reasonable documentation of the  
6 prospective tenant's new rental or of the fact that the  
7 prospective tenant did not move, such as a lease, rental  
8 agreement, or utility bill, with sufficient information to  
9 verify that the new rental was not obtained through the  
10 services of the licensee or that the prospective tenant did  
11 not move.

12 (B) If the prospective tenant is unable to locate or  
13 provide the documentation specified in subparagraph  
14 (A), the prospective tenant may, at his or her option, fill  
15 out and sign a written statement, supplied by the licensee,  
16 in the following form:

17  
18 I, \_\_\_\_\_, do swear or affirm the following:  
19 (name of prospective tenant)

20  
21 I currently live at \_\_\_\_\_ .  
22 (street address)

23  
24 The following statement is true (check one):  
25

26 \_\_\_\_\_ I have rented a unit at the above address. I did not obtain  
27 this rental through the services of \_\_\_\_\_  
28 (name of licensee)  
29 during the time of our contract.

30  
31 \_\_\_\_\_ I did not find a new rental and did not move. I still live at  
32 the above address.

33  
34 I declare under penalty of perjury that the foregoing is true and  
35 correct to the best of my knowledge.

36  
37 \_\_\_\_\_  
38 (date)

39 \_\_\_\_\_  
40 (location)



1 \_\_\_\_\_  
2 (signature)  
3

4 (3) On or after January 1, 2002, the department may,  
5 from time to time, by regulation, adjust the amount of the  
6 allowable service charge to reflect the rate of inflation  
7 from the previous date that the amount of the allowable  
8 service charge was established, as measured by the  
9 Consumer Price Index or other method of measuring the  
10 rate of inflation which the department determines is  
11 reliable and generally accepted.

12 (c) Each contract shall contain provisions that shall  
13 read as follows unless different language shall have been  
14 approved in writing by the department prior to use:

15  
16 “RIGHT TO REFUND

17 (Full capital letters, in 12-point type or greater,  
18 boldface; or italicized)

19 If, within five days after payment of ~~an advance~~ a fee,  
20 the licensee has not supplied the prospective tenant with  
21 at least three available rental properties meeting the  
22 specifications of the contract as to (i) type of structure;  
23 (ii) designated area; (iii) furnished or unfurnished; (iv)  
24 number of bedrooms; (v) maximum rental; and (vi) any  
25 other specification expressly set forth in the contract, the  
26 full amount of the fee paid shall be refunded to the  
27 prospective tenant upon presentation of evidence of that  
28 failure within 10 days after the expiration of the five-day  
29 period. The prospective tenant is not entitled to a refund  
30 if the prospective tenant obtains a rental through the  
31 services of the licensee.

32 If the prospective tenant obtains a rental other than  
33 through the services of the licensee during the term of  
34 this contract or if the prospective tenant does not obtain  
35 a rental through the services of the licensee during the  
36 term of the contract, the licensee shall refund the fee  
37 received in excess of a (insert applicable limit pursuant  
38 to subdivision (b) of Section 10167.10 of the Business and  
39 Professions Code) service charge to the prospective  
40 tenant within 10 days after the prospective tenant

1 supplies either (i) reasonable documentation of the  
2 prospective tenant's new rental or of the fact that the  
3 prospective tenant did not move, such as a lease, rental  
4 agreement, or utility bill, with sufficient information to  
5 verify that the new rental was not obtained through the  
6 services of the licensee or that the prospective tenant did  
7 not move, or (ii) if the prospective tenant is unable to  
8 locate or provide that documentation, the prospective  
9 tenant may, at his or her option, fill out a written form  
10 provided by the licensee and signed by the prospective  
11 tenant under penalty of perjury stating that he or she did  
12 not obtain a rental through the services of the licensee  
13 during the time of the contract.

14 To be entitled to a refund in excess of the service  
15 charge, the prospective tenant must mail or deliver the  
16 demand for refund not later than 10 days after expiration  
17 of this contract, and must supply either (i) reasonable  
18 documentation of the prospective tenant's new rental or  
19 of the fact that the prospective tenant did not move, such  
20 as a lease, rental agreement, or utility bill, with sufficient  
21 information to verify that the new rental was not  
22 obtained through the services of the licensee or that the  
23 prospective tenant did not move, or (ii) a written form  
24 provided by the licensee and signed by the prospective  
25 tenant under penalty of perjury stating that he or she did  
26 not obtain a rental through the services of the licensee  
27 during the time of the contract. The documentation may  
28 be supplied after the demand for a refund is mailed or  
29 delivered, provided that it is supplied within a reasonable  
30 time after it becomes available.”

31  
32 (d) This section shall not apply to a person purchasing  
33 rental information for a purpose other than that of  
34 locating a rental unit for personal use or the use of a  
35 designated person.

36 (e) If the licensee fails to make a refund as provided  
37 in this section and if the denial or delay in making the  
38 refund is found to have been done in bad faith, a court of  
39 appropriate jurisdiction, including a small claims court,~~or~~  
40 ~~the commissioner pursuant to subdivision (f),~~ shall be

1 empowered to award damages to the plaintiff in an  
2 amount not to exceed one thousand dollars (\$1,000) in  
3 addition to actual damages sustained by the plaintiff. If  
4 the licensee refuses or is unable to pay the damages  
5 awarded by the court, the award may be satisfied out of  
6 the security required under Section 10167.7.

7 SEC. 7. Section 10167.11 of the Business and  
8 Professions Code is amended to read:

9 10167.11. It shall be a violation of this article for any  
10 licensee or any employee or agent of a licensee to do the  
11 following:

12 (a) Make, or cause to be made, any false, misleading,  
13 or deceptive advertisements or representations  
14 concerning the services that the licensee will provide to  
15 prospective tenants.

16 (b) Refer a property to a prospective tenant knowing  
17 or having reason to know that:

18 (1) The property does not exist or is unavailable for  
19 tenancy.

20 (2) The property has been described or advertised by  
21 or on behalf of the licensee in a false, misleading, or  
22 deceptive manner.

23 (3) The licensee has not confirmed the availability of  
24 the property for tenancy during the four-day period  
25 immediately preceding dissemination of the listing  
26 information. However, it shall not be a violation to refer  
27 a property to a prospective tenant during a period of from  
28 five to seven days after the most recent confirmation of  
29 the availability of the property for rental if the licensee  
30 has made a good faith effort to confirm availability within  
31 the stated four-day period, and if the most recent date of  
32 confirmation of availability is set forth in the referral.

33 (4) The licensee has not obtained written or oral  
34 permission to list the property from the property owner,  
35 manager, or other authorized agent.

36 SEC. 8. Section 10167.12 of the Business and  
37 Professions Code is amended to read:

38 10167.12. (a) The commissioner may suspend, deny,  
39 or revoke the license of a licensee or the license of the

1 licensee to operate at one or more locations for either of  
2 the following:

3 (1) A violation of this article by a licensee or by an  
4 employee or agent, including a designated agent, of the  
5 licensee.

6 (2) A conviction of a licensee, or a designated agent,  
7 or of an officer, director, or owner of 25 percent or more  
8 of the shares of a corporate licensee for a crime which is  
9 substantially related to the qualifications, functions, or  
10 duties of a prepaid rental listing service licensee.

11 (b) For the purpose of determining whether grounds  
12 exist for suspending, denying, or revoking the license of  
13 a licensee, the commissioner shall hold a hearing in  
14 accordance with Chapter 5 (commencing with Section  
15 11500) of Part 1 of Division 3 of Title 2 of the Government  
16 Code.

17 SEC. 9. No reimbursement is required by this act  
18 pursuant to Section 6 of Article XIII B of the California  
19 Constitution because the only costs that may be incurred  
20 by a local agency or school district will be incurred  
21 because this act creates a new crime or infraction,  
22 eliminates a crime or infraction, or changes the penalty  
23 for a crime or infraction, within the meaning of Section  
24 17556 of the Government Code, or changes the definition  
25 of a crime within the meaning of Section 6 of Article  
26 XIII B of the California Constitution.

